

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Tuesday, November 16, 2021

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairwoman Lodge, Vice Chairman Guthrie, Senators Winder, Anthon, Harris, Lee, Heider, Stennett, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairwoman Lodge** called the Senate State Affairs Committee (Committee) to order at 8:01 a.m. She announced that this is an informational hearing to allow for Committee and public input. She distributed a copy of Title 39, Chapter 90, known as the Idaho Health Freedom Act (IHFA) (see Attachment A) to the Committee.

S 1222 **Relating to COVID-19** to establish provisions regarding certain COVID-19 funding.

Senator Grant Burgoyne, District 16, stated this legislation is not intended to go against personal beliefs in respect to the issue of vaccinations. Under existing law, there are no government nor school mandates in Idaho to vaccinate against any disease including COVID. Idaho's approach to vaccination has been entirely voluntary. However, there is no assurance that anyone who wants to vaccinate has access to timely, correct, and understandable information about vaccinations. Idaho has received federal COVID money which can be used to address these issues. The following are ways to address work force and vaccination issues by reimbursing employers for wages paid to workers taking time off to:

- Receive or assist a family member to receive COVID vaccinations.
- Recover from adverse reactions to COVID vaccines.
- Reimburse employers for wages paid to workers who are recovering or caring for a family member who has an adverse reaction.
- Have rapid COVID testing readily available to employers and general public.
- Compensate people who are exposed and must stay home.
- Enhance multi lingual capabilities for COVID-19 vaccine information and administration.
- Develop a sick leave bank for all public employees including school personnel.
- Compensate people at the State level for vaccine injuries.
- One-time bonus payments to essential workers.

Senator Janie Ward-Engelking, District 18, explained why this bill is critical at this time by focusing on teachers and the school system. Educators are working harder than ever trying to address the teaching issues and the addition of other duties while losing paraprofessionals and parents who are no longer allowed in classrooms to assist teachers. Education is not the only field where essential workers are dealing with similar issues.

Senator Ward-Engelking stated there is \$1.1 billion of COVID relief money in Idaho. Four percent of those funds have been allocated and only one percent of the allocated funds have been spent. These issues cannot wait until next year's budget cycle so she made the following suggestions:

- Every teacher could receive a \$1,000 bonus before the holidays; the total cost would be \$20 million.
- Set up a state-wide sick leave bank to be used only if it is a COVID related sick leave or quarantine leave.
- Employers could apply for those funds to cover the cost. She explained why regular sick leave does not work for COVID related issues.

Senator Ward-Engelking referred to Attachment B, Category (B) where The American Rescue Plan Act of 2021 (ARPA) provides a premium up to \$13.00 per hour in addition to base pay for performing essential work during the COVID-19 health emergency. This includes a wide range of workers. Another critical action would be to get rapid testing into the schools. There is a worker shortage and a teacher shortage and we can't wait any longer for solutions.

DISCUSSION:

Senator Harris asked for an explanation of the COVID-19 vaccine injury compensation program. **Senator Ward-Engelking** yielded to Senator Burgoyne. **Senator Burgoyne** responded that there is difficulty making this fund nationally functional in respect to COVID vaccines and it is widely reported that this fund has not been accepting and paying claims of injury from COVID-19 vaccines. A way needs to be found to at least partially compensate people who experience these injuries.

Senator Anthon asked how much the districts have received in pandemic relief. **Senator Ward-Engelking** answered that it is close to \$400 million. Those funds have been used for building improvements for sanitation, air quality, and protection projects. A portion of the funds have been held in reserve for future needs.

Senator Guthrie referred to Lines 16-24, bullets 1 and 3 of the bill related to compensating employers when off work. He asked if there is a cap on reimbursement and would this be applicable to State employees? **Senator Ward-Engelking** responded that it would be applicable to State employees and for educators. **Senator Burgoyne** stated this legislation is not meant to be overly prescriptive with respect to the executive branch. This allows for the executive branch to set appropriate caps and limits. **Senator Ward-Engelking** said this legislation is addressed to areas where there are huge work shortages and employees are in danger.

Senator Lee asked how the emergency clause would impact some of the things in this legislation that need further investigation. Passage of **S 1222** would be immediate and the structure is not in place to support the emergency clause. **Senator Ward-Engelking** stated there are some of the issues that could be addressed immediately; more time will be needed for other items in the bill.

S 1223

Relating to the Idaho Health Freedom Act regarding termination based on health care services.

Senator Peter Riggs, District 3, quoted paragraph (2) of the IHFA (see Attachment A). If there is to be a change to IHFA, the language must be properly constructed to protect the people of Idaho, both employers and employees. There are already baseline labor regulations that businesses are legally required to follow. The key is making sure that when new regulations are considered, they will not create undue burdens for businesses or their employees.

Senator Riggs said there should be a level playing field for all of the people of Idaho to work and build their lives on. The proposed language gives more clarity to the IHFA by allocating a considerable amount of responsibility for employers and employees to work together to come to a collaborative solution.

DISCUSSION: **Senator Stennett** asked about the difference between policy and law and what would be the effect when there are conflicting employees who feel their own rights are not evenly served under that employer. **Senator Riggs** responded that there will be a legal weight difference associated to formally passed laws and those that are executive orders. If there is a lawsuit, the difference between the two determines who is going to make the decision. It is not going to alleviate conflict between the dictates of a business and personal philosophies. The purpose is to get people to work together toward collaborative solutions.

Senator Stennett asked how the State could comply with this. **Senator Riggs** stated the State doesn't enforce it. The State's job is to set the standard.

Senator Winder said Federal mandates have provided policies of vaccination or termination; those are currently rescinded. Also, there are employers with jobs that need international travel requirements which requires vaccination. How does this bill strike a balance between employment policies and employee rights of privacy? Idaho already has some strong anti-vaccination laws. **Senator Riggs** said there is not a solution that "fits all" because this is an unprecedented situation. There is no way to craft legislation specific and broad enough to work well in each situation. Legislation should be the bare minimum to set the framework and let the people work out the process.

Senator Winder asked how this particular bill will strike that balance. **Senator Riggs** answered that there should be discussion between the two parties to develop a compromise to overcome the issue.

Senator Burgoyne stated that the Americans with Disabilities Act, a Federal law, requires employers to reasonably accommodate medical conditions that might be applicable to taking a COVID vaccine. Title 7 of the Civil Rights Act of 1964, a Federal law, currently requires employers to accommodate religious objections to vaccinating. The Idaho Human Rights Act, State policy, requires that employers accommodate religious and medical objections. The Federal and State laws already relate to the issue of undue hardship. The language in Subsection 5 on page 2, lines 6-15, is worded differently than existing law and could create legal confusion. Some of the COVID money could be used to apprise employers and employees of their legal rights.

Senator Burgoyne addressed page 1, lines 36-37, and suggested the language be changed to read that "no employer shall discriminate against any employee for choosing not to receive the COVID vaccine". This language would make it clear that an employee cannot be fired or reassigned because of a refusal to take the COVID vaccine but can be fired for not doing a good job. **Senator Riggs** commented that it is important to ensure that both businesses and employees understand the legal framework available to them through existing State and Federal laws.

S 1224 AND **Relating to Employers and Employees** regarding conditions of employment related to medical, and natural immunity exemptions.

S 1225 **Relating to Employers and Employees** regarding conditions of employment regarding informed consent.

Senator Grow, District 14, stated his objective with both bills was to get employers and employees to a middle ground. There is a fear factor involved with the mandated deadlines and the timelines to comply. The objective of these pieces of legislation is to protect individuals so they are not forced to be vaccinated; to keep businesses open and safe; and have customers feeling safe to go to businesses, especially medical facilities.

S 1224 - Senator Grow outlined the exemptions:

Exemptions for medical, religious, and natural immunity.

-The medical and religious immunity are in Federal statute but **S 1224** would also add it to Idaho statute.

-**Senator Grow** did not go into great detail on religious exemptions because an employee only needs to sign a statement to refuse the COVID vaccination on religious grounds.

-A Natural Immunity exemption can occur if someone has had the disease. An employee must provide proof of a positive polymerase chain reaction (PCR) test from a physician or a positive serum antibody test from a CLIA-certified laboratory showing positive results of specific antibodies against the COVID-19 virus to the employer.

S 1225 - Senator Grow noted this is a stand alone bill relative to philosophical exemptions.

-Senator Grow read the contents of the bill (see Attachment D)

Senator Grow said the objective is to ensure employers or employees are not adversely affected.

DISCUSSION:

Senator Lee asked how this information would be distributed to employees.

Senator Grow stated that each employer could handle it differently. He provided examples of how it could be done but in all cases a copy of the law would be handed out.

Senator Stennett referred to **S 1224**, page 1, lines 15-16 and inquired how a medical facility is supposed to determine if the COVID-19 immunization caused the injury. **Senator Grow** explained that the physician has the flexibility to make a decision on the physical condition of the employee. **Senator Stennett** asked who would be paying for the tests outlined on page 1, lines 21-24 of the bill and is there an expectation one of these tests would be required to settle a dispute. **Senator Grow** said costs would be decided between the employer and the employee. The cost of a test runs between \$40 and \$60.

Senator Stennett asked if there is a need for a statute; the information could be included in the employee manual. **Senator Grow** explained that many Idaho businesses are very small. Having a Human Resources Department or manuals is not possible.

Senator Burgoyne referred to page 1 lines 22-27 and explained the kind of costs involved in dispersing the information would cause a different impact relative to a small or large business. Some of the COVID money could be used to have the State Attorney General draft something to give employers help in complying with this section of the legislation.

Senator Burgoyne asked where in the process is the PCR test done; does it have to be current and is there an expiration date? How are the antibody values established? **Senator Grow** answered that the specific answers to those questions are not indicated in **S 1224**. The PRC test only indicates if someone has had COVID. The positive immunity test for antibodies lasts longer.

Senator Burgoyne explained his concern on subsection (a) and suggested a change in the "would be" language. **Senator Grow** said a change in that language would be a professional call by a medical person.

Senator Stennett referred to the PCR or the CLIA approved laboratory antibody test and gave examples of what happened in her district when it was hard hit by COVID. These methods of testing are questionable because some facilities don't do the testing nor are some of the labs available. It is questionable if the employer or lay person will know how to do this provision. **Senator Grow** said that doctors did not raise any concern about the ability or accessibility of testing at this time.

TESTIMONY: Kathy Dawes, Remote, supported **S 1222** stating federal funds should be accepted. She is opposed to **S 1223**, **S 1224**, and **S 1225** stating that there must be an alternative to rejecting vaccinations and loosing jobs.

The following testified in opposition to at least two of the four bills:

Maggie Goff, Idaho

Rosa Martinez, District 20

Monica McKinley, Idaho

Brian Whitlock, Idaho Hospital Association

Ken McClure, Idaho Medical Association (see Attachment C)

Nina Beesky, Idaho

Doug Gross, Eagle, Idaho

Michael Shore, Boise, Idaho

Amy Henry, District 13

Reasons for opposition were as follows: stop taking federal funds, the people are paying for it through both state and federal taxes; the are no vaccines only Message RNA; government is causing the problems; job of government is to protect rights not attack them; not the job of Federal Government to threaten employers and force employees to be vaccinated; get information out but don't vote on it – landscape is changing rapidly; all the bills can be improved in a variety of ways; opposition to testing in schools; and the need to be precise on the definition of vaccine.

DISCUSSION: **Senator Winder** stated that he found the discussion very beneficial through those presenting the bills and public testimony and to see how difficult this question really is. How do we strike a balance? How do we legislate in such a way that people's individual rights are respected? These discussions have emphasized the difficult job before us to deal with all aspects of the situation we are in.

ADJOURNED: There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 9:56 a.m.

Senator Lodge
Chair

Twyla Melton
Secretary